IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.460 OF 2006

Bajrang Kashiram Jamadade ...Appellant
Vs.
Mansingrao Ganpatrao Pisal & Ors. ...Respondents

Mr.P.B.Shah for the Appellant
None for the Respondents.

CORAM: A.S.OKA, J.
DATED: APRIL 26,2006.

P.C.:

1. Heard Shri Shah for the Appellant. The Appellant is the original Defendant. The suit for injunction filed by the Respondents-original Plaintiffs in respect of the suit agricultural land was dismissed by the Trial court. In an Appeal preferred by the Respondents, decree for injunction has been passed.

2. Shri Shah submitted that the though the predecessors-in-title of the Respondents were the owners of the suit property, the Appellant is in possession of the suit property. The voluminous documentary evidence on record makes it clear that the Appellant was in possession of the suit land on the date of institution of the suit. He submitted that the predecessor-in-title of the Respondents have admitted that the Appellant was in possession of the suit land. He pointed out that the Respondents purchased the suit land on 15th November 1985 from Kothawale brothers. He pointed out that the Appellant has examined nine independent witnesses to prove his possession. He also pointed out the Court Commissioner’s report which according to him indicates

that the Appellant was in possession of the suit land. He submitted that the result of the grant of decree of perpetual injunction will be that the Appellant who is in possession of the suit land will be dispossessed.

3. I have considered the submissions. It is not in dispute that the Respondents are the owners of the suit land. The suit land was purchased by the Respondents from M/s. Kothawale Brothers in the year 1985. It is also an admitted position that the father of the Appellant claimed to be an agricultural tenant in respect of the suit land. However, he could not prove his tenancy and claim for tenancy was negatived in proceedings which were taken upto this court. The Appellate court has referred to the possession receipt at Exh.125 which is dated 14th May 1970 which shows that the possession of the suit land was handed over by the father of the Appellant to Kothawale Brothers who were the predecessors-in-title of the Respondents. The Appellate Court noted that the Predecessors-in-title of the Respondents had obtained certificate under section 88-C of the Bombay Tenancy and Agricultural Lands Act,1948 and also observed that the after fighting the litigations up to this court, they obtained the possession of the suit land from the father of the Appellant.

4. Reliance was placed by the Advocate for the Appellant on the admissions of the witnesses examined on behalf of the Plaintiff/Respondent. The said admission is to the effect

that the Appellant was a labourer employed by the Predecessors-in-title of the Respondents. The statement of the Predecessor-in-title of the Respondents which is relied upon by the Appellant shows that the Appellant was the labourer/employee appointed by the predecessor-in-title of the Respondents. A labourer or an employee cannot claim to be possession of the suit land.

5. So far as the report of the Court Commissioner is concerned, the Appellate Court has noted that the Commissioner has exceeded the powers vested in him by the court while appointing him as the Court Commissioner. Apart from this, report of the Commissioner does not appear to be inconsistent with the material on record. At highest, it can be held that the Appellant was an employee employed by the predecessors-in-title of the Respondents. The Appellate Court has observed and in my view, rightly, that it is difficult to imagine that after fighting a long battle and after having taken possession from the father of the Appellant, the predecessor-in-title of the Respondents will again put the Appellant in possession. Taking the case at highest, it can be said that the Appellant was employed as a labourer by the predecessor-in-title of the Respondents for cultivation of the suit land. The alleged possession of a labourer/employee cannot be said to be a settled possession by any stretch of imagination. There is no error in the findings of the Appellate Court.

6. Second Appeal is dismissed with no order as to costs.

Judge.